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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,036	12/02/2005	Craig A. Andreiko	ORM-231US	2750
26875 7590 05/28/2008 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER BASHAW, HEIDI M	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 05/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/528,036	ANDREIKO, CRAIG A.	
	Examiner	Art Unit	
	HEIDI M. BASHAW	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-28, 45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 and 30-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-28, 45 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/27/2006, 3/26/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group III, claims 26-28 in the reply filed on April 16, 2008 is acknowledged.
2. Claims 1-25 and 30-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected groups, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 16, 2008.

Drawings

3. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 26-28 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sachdeva et al. 6,315,553 (Sachdeva) in view of Bergersen 5,882,192.
6. Re claim 26, Sachdeva teaches a method of providing a custom orthodontic appliance for treatment of a patient, the method comprising receiving information from an orthodontic practitioner for providing a custom orthodontic appliance for a patient in response to the information from the orthodontic practitioner (col. 10, ll. 45-52), determining parameters for the configuration of a custom orthodontic appliance for the patient and providing to the orthodontic practitioner an orthodontic appliance design for the patient having a configuration that includes the determined parameters (col. 4, ll. 18-39).
7. Sachdeva does not teach the method comprising maintaining a database accessible by computer and containing data related to each of a plurality of practitioners, storing in the database, information identifying the practitioners and information relating to treatment plan options associated with the respective practitioners .
8. Bergersen teaches the method comprising maintaining a database accessible by computer and containing data related to each of a plurality of practitioners, storing in the database, information identifying the practitioners and information relating to treatment plan options associated with the respective practitioners (col. 28, ll. 1-4).

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9. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sachdeva in view of Bergersen in order to provide the patient with the treatment options for their condition.

10. Re claim 27, Sachdeva teaches the method further comprising receiving information from the orthodontic practitioner of a treatment plan option for treatment of the patient and determining at least one of the parameter based at least in part on the information of the treatment plan option received from the orthodontic practitioner (col. 15, ll. 34-37).

11. Re claim 28, Sachdeva teaches the method further comprising receiving information from the orthodontic practitioner of a treatment plan option for treatment of the patient and determining parameter addressed by the information of the treatment plan option received from the orthodontic practitioner in accordance with that information and determining parameters not so addressed in accordance with information stored in the database (col. 10, ll. 26-24).

12. Re claim 45, Sachdeva teaches the method further comprising providing to the orthodontic practitioner the orthodontic appliance manufactured in accordance with the orthodontic appliance design (col. 4, ll. 31-39).

13. Re claim 46, Sachdeva teaches a method of providing a custom orthodontic appliance for treatment of a patient, the method comprising in response to information from an orthodontic practitioner (col. 10, ll. 27-34), providing an orthodontic appliance for an individual patient having a configuration that includes appliance parameters base

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at least in part on predetermined treatment plan options associated with the practitioner (col. 10, ll. 45-52).

14. Sachdeva does not teach the treatment retrieved from a previously created and maintained database containing database containing data associating a plurality of orthodontic practitioners with treatment plan options respectably preferred by each practitioner.

15. Bergersen teaches the treatment retrieved from a previously created and maintained database containing database containing data associating a plurality of orthodontic practitioners with treatment plan options respectably preferred by each practitioner (col. 28, ll. 1-4).

16. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sachdeva in view of Bergersen in order to provide the patient with the treatment options for their condition.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. BASHAW whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Heidi Bashaw
Examiner
Art Unit 3732

/John J Wilson/
Primary Examiner
Art Unit 3732

HMB